Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition Of AT&T For Interim Declaratory Ruling And Limited Waivers	)	WC Docket No. 08-152
	)	
	)	
	)	

COMMENTS OF ADHOC TELECOMMUNICATIONS USERS COMMITTEE

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August 21, 2008

SUMMARY

AdHoc agrees with AT&T that a comprehensive overhaul of the Commission's intercarrier compensation rules is long overdue. AdHoc also recognizes that the Commission faces a court-imposed deadline in the *Core Communications* case to provide a rationale for rules governing intercarrier compensation for ISP-bound dial-up traffic exchanged between two LECs. But AdHoc urges the Commission to deny AT&T's petition in this docket, for three reasons.

First, a decision on broader reciprocal compensation issues, assembled in haste to meet a judicial deadline that applies only to the very narrow issue remanded by the court, would be misguided and counter-productive. Comprehensive intercarrier compensation reform is too important and too complex for the "hurry up" timetable suggested by AT&T. Cobbling together the self-serving proposals of different carrier groups will not produce an equitable and economically efficient compensation system that furthers the statutory objectives of the Communications Act, promotes competition, or protects the interests of ratepayers. Therefore, the Commission should focus its efforts on resolving by November the narrow issue remanded by the court in *Core Communications* and pursue comprehensive and principled intercarrier compensation reform in the context of a thoughtful and deliberative rulemaking process like that already underway in Docket No. 01-92.

Second, AT&T is using the urgency of the *Core Communications* remand and a narrow view of VoIP interconnection issues to press for the immediate

adoption of cherry-picked "solutions" that are irrelevant both to the issues in the *Core Communications Remand* and the VoIP interconnection "problems" identified by AT&T in its petition. While it may be true, as AT&T quips in its petition, that everybody talks about the weather but does nothing about it, it is also true that old wine in new bottles is still old wine. Similarly, AT&T's declaratory ruling petition attempts to re-package AT&T's preferences for revising certain aspects of the access charge system as if they were "solutions" to the VoIP-specific issues it identifies. But the "solutions" AT&T advocates do not even address the VoIP issues it describes. Increasing interstate SLCs to fund reductions in intrastate switched access charges does not address the VoIP compensation issues AT&T cites in its petition as a justification for the changes.

Finally, AT&T's selective focus on certain access charge "fixes" and the creation of a new and implicit subsidy for intrastate access charges ignores far more significant problems in the current intercarrier compensation system, such as the disparate treatment of wireless traffic (like that of AT&T Wireless) terminating on wireline networks, which dwarfs in dollars the impact on the access charge system of the VoIP "problem." If the Commission decides to pick and choose among the many cracks in the current system and impose policy band aids on an interim basis pending a comprehensive overhaul of intercarrier compensation, it should pick and choose carefully. AT&T's priorities are not synonymous with the public interest. Carriers who would enjoy higher revenues if today's flawed compensation system were applied to more services will advocate that expansion; carriers whose revenues would shrink will oppose it.

The Commission's first priority should be fixing the flaws in the current system, not expanding the coverage of a flawed system. Pending comprehensive reform, any "interim" steps taken by the Commission should first address the far greater problem of excessive access rates and unreasonable cost recovery levels under the present regime, not the expansion of that flawed regime to new services.

The efforts of individual stakeholders like AT&T to advance their self-interest through putative reform proposals are rational and understandable. But their self-interest is rarely consistent with the interests of ratepayers or the public interest generally. The Commission cannot allow that self-interest to distort or de-rail even temporarily the intercarrier compensation reform process and delay the public interest benefits of a comprehensive solution.

TABLE OF CONTENTS

SUMMARY I

DISCUSSION 1

I. THERE IS NO REASON TO ADOPT INTERIM MEASURES ON AN EXPEDITED BASIS PENDING COMPREHENSIVE INTERCARRIER COMPENSATION REFORM 4

II. THE WAIVERS AT&T SEEKS DO NOT ADDRESS THE PROBLEM IT IDENTIFIES TO JUSTIFY ITS WAIVER REQUEST 7

III. THE COMMISSION MUST ADOPT SOLUTIONS THAT SERVE THE PUBLIC INTEREST AND STATUTORY OBJECTIVES, NOT THE PAROCHIAL INTERESTS OF INDIVIDUAL STAKEHOLDERS 11

A. The Commission Cannot Base Intercarrier Compensation Mechanisms on Competitive Hopes and Predictions 13

B. The Commission Must Reject Carrier Demands for Revenue Neutrality 18

CONCLUSION 20

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The AdHoc Telecommunications Users Committee (the "AdHoc Committee")[1] submits these Comments pursuant to the Commission's July 24, 2008 Public Notice[2] in the dockets captioned above.

DISCUSSION

"Intercarrier compensation" issues stem from a basic principle to which there can be no reasonable objection: when two or more carriers must interconnect to complete a data circuit or telephone call, each carrier must be compensated for its share of the resources involved in providing the complete end-to-end service. While that principle is straightforward, implementing it has

1 The members of AdHoc are among the nation's largest and most sophisticated corporate buyers of telecommunications services, including nine of the Fortune 100 and 19 of the Fortune 500. Committee members come from a broad range of economic sectors (manufacturing, financial services, insurance, retail, package delivery, and information technology) and maintain thousands of corporate premises in every region of the country. Their combined annual spend on communications products is between two and three billion dollars per year. AdHoc admits no carriers as members and accepts no carrier funding. AdHoc members therefore have no commercial self-interest in imposing unnecessary regulatory constraints on incumbent service providers. As substantial, geographically-diverse end users of telecommunications service nation-wide, AdHoc members are uniquely qualified to provide a credible, unbiased, and informed perspective on the state of telecommunications markets and the impact of regulatory policy.

2 *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers Pleading Cycle Established*, WC Docket No. 08-152, Public Notice, DA No. 08-1725 (rel. July 24, 2008).

been a controversial exercise that was complicated further by the 1996 amendments to the Communications Act.

The particulars of intercarrier compensation arrangements are subject to wide variation based upon the type of call, the type of carrier, and the applicable legal jurisdiction. Inter- and intrastate "access charges" apply to long distance or "interexchange" calls while "reciprocal compensation" arrangements apply to calls handed off between "local" carriers.

The Commission's access charges were originally put in place in 1984 shortly after the break-up of the Bell System in order to facilitate interLATA (long distance) competition. However, the Commission and state regulatory authorities plainly contemplated that access charge rate levels would permit the newly-divested Bell Operating Companies and other ILECs to retain a portion of the long distance revenue stream that had been used historically to subsidize their charges for basic local exchange service. Accordingly, access charge levels were, by design, tied to a preexisting revenue level and did not simply recover the economic costs associated with "access services."

Reciprocal compensation charges, on the other hand, were introduced concurrently with the onset of "local" service competition in the wake of the 1996 amendments to the Act, providing a means to allocate revenues when a local carrier handed off calls to another local carrier for termination to the called party. Because the goal of the reciprocal compensation regime was to apportion revenues among the participating carriers in some relation to the costs each incurred, these charges were generally intended to be cost-based and, indeed, Sec. 252(c)(2) provides that:

> the terms and conditions for reciprocal compensation [shall not be considered] to be just and reasonable unless--
>
> `(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier *of costs* associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> `(ii) such terms and conditions determine *such costs* on the basis of a *reasonable approximation of the additional costs* of terminating such calls.

47 U.S.C. § 252(c) (emphasis added). As a result, revenue-driven access charges are typically much higher than cost-based reciprocal compensation charges for what are in most other respects comparable – if not virtually identical – services. The determination as to which compensation regime will be applied – access charges or reciprocal compensation – is driven primarily by the specific type of call and the specific type of carriers involved in the transaction. It is precisely these artificial and seemingly arbitrary distinctions that have helped to fuel the ongoing intercarrier compensation controversy.

Whereas the original distinction between "access charges" and "reciprocal compensation" related to the distinction between "long distance" and "local" calls, AdHoc agrees with AT&T and others that application of the long distance vs. local distinction has blurred over time as new technologies complicate the enforcement of regulatory distinctions. IP routing, mobile consumers, the addressability of individual devices regardless of physical location, and current number assignment protocols have all undermined the traditional methods used by ILECs to detect and distinguish between interstate, intrastate, and local traffic. In many cases, different intercarrier compensation treatments apply to what may be viewed as similar, perhaps even substitutable services, placing some at a competitive advantage (or disadvantage) relative to others.

The notion of a unified approach to intercarrier compensation, formally articulated by the Commission in 2001, [3] seeks to address and ultimately eliminate these competitive disparities. Elimination of such disparities can, of course, be accomplished either by lowering the considerably higher access charges down to reciprocal compensation levels, by raising reciprocal compensation rates up to the level of access charges, or bringing them into parity somewhere in the middle.

But the "interim" solutions AT&T proposes in its petition do nothing to address this problem nor is there an urgent need to adopt interim solutions on an expedited basis at this time.

I. THERE IS NO REASON TO ADOPT INTERIM MEASURES ON AN EXPEDITED BASIS PENDING COMPREHENSIVE INTERCARRIER COMPENSATION REFORM

Although pre-merger AT&T had generally supported reducing access charges to bring them into parity with reciprocal compensation rates in the long term, its Petition now seeks to expand the applicability of access charges to certain types of calls – those provided using Voice over Internet Protocol ("VoIP") technology – which currently may escape access charges.[4] Concurrently, AT&T is asking that higher intrastate switched access charges regulated by the states be subsidized by increases in federally regulated access charges. Specifically,

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[3] *See Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001), Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*Unified Intercarrier Compensation Rulemaking*").

[4] AT&T Petition at pp. 26 and 37.

AT&T proposes that intrastate switched access charges be reduced to the levels associated with interstate access services and that AT&T's resulting loss of revenue be made up through increases in monthly subscriber line charges ("SLCs"), originating switched access charges, and increases in Universal Service Fund ("USF") assessments.[5]

In an *ex parte* letter submitted to the Commission on August 6, 2008 by a coalition of RBOCs, ILECs and CMRS carriers,[6] AT&T now joins Verizon, several wireless carriers, and others in asking that all VoIP traffic – including in particular interexchange VoIP calling – be made subject to a uniform charge that does not appear to be an access charge or a reciprocal compensation rate (or perhaps it is both). At the very least, these conflicting positions make it difficult to determine what AT&T actually supports.

As noted above, the Commission initiated its first formal attempt to achieve a unified intercarrier compensation regime in 2001 yet the matter has remained unresolved during the seven years since then. AT&T has now proposed two seemingly opposite near-term "fixes" but offers no rationale for rushing to complete in slightly more than 60 days following the September 2, 2008 date for reply comments in this docket something that the Commission has been unable to achieve after more than seven years. And, in fact, there is no compelling reason for the Commission to rush to judgment at this time.

AdHoc recognizes that the FCC recently received a mandate from the

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5 *Id.* at pp. 23 and 42.

6 Letter from AT&T, Verizon, CTIA, *et al.,* to FCC Chairman Kevin Martin, *et al.*, WC Docket Nos. 04-36 and 01-92 (filed August 6, 2008) ("*August 6 Ex Parte Proposal*").

U.S. Court of Appeals for the D.C. Circuit ("*Core Communications Mandate")* to respond, by issuing an appealable order no later than November 5, 2008, to that Court's 2002 remand of an earlier FCC Order.[7] The AT&T *Petition* and the *August 6 Ex Parte Proposal* were both filed in the aftermath of the Court's order, and both portray a sense of urgency in addressing the intercarrier compensation issues that are the subject of pending proceedings at the Commission.

The AT&T *Petition* and the *August 6 Ex Parte Proposal* go far beyond what the Commission is under a mandate to address by November, however. Nothing in the *Core Communications Mandate* would require the Commission to act on either of these proposals by the November 5 date. The *Core Communications Mandate* directs the Commission to comply with the court's 2002 remand and nothing else; the Commission must only justify that prior decision, not develop an entirely new set of rules.

To whatever extent AT&T's competitors are taking advantage of the various arbitrage opportunities created by the existing intercarrier compensation regime, AT&T offers no evidence that it is being materially affected either financially or competitively. Other than heated rhetoric, AT&T has made no showing nor provided any affirmative demonstration that Commission action on its *Petition* is needed on an emergency basis – and certainly not within the narrow timeframe established by the *Core Communications Mandate*.

The Commission has sought and received comment over the years on a variety of conflicting industry proposals to revamp intercarrier compensation

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7 *In re Core Communications, Inc.,* No. 07-1446, 2008 U.S. App. LEXIS 14501 (D.C. Cir. July 8, 2008) ("*Core Communications Mandate*").

requirements, including the so-called "Missoula Plan"[8] for which AT&T reiterates its support in its petition. At the time that AT&T first proposed the *Missoula Plan*, AdHoc had identified serious flaws in the plan's assumptions and mechanisms. A copy of AdHoc's *Comments* is attached hereto and incorporated herein. The *Missoula Plan*, AT&T's latest waiver petition, and the *August 6 Ex Parte Proposal* all share a common characteristic: they are self-interested reform proposals by industry participants that enhance their competitive positions, insulate them from the revenue effects of intercarrier compensation reform, and raise prices for consumers at all levels – from individual residential customers to the largest corporate and government users.

Accordingly, instead of adopting a "hurry up" rule in response to the parochial concerns embodied in AT&T's waiver petition and related pleadings, the Commission should consider the full range of comments and proposals submitted to it over these past seven years, develop proposed rules that balance the interests and concerns of the broad range of participating stakeholders, and release them for comment by interested parties.

II. THE WAIVERS AT&T SEEKS DO NOT ADDRESS THE PROBLEM IT IDENTIFIES TO JUSTIFY ITS WAIVER REQUEST

AT&T offers its waiver petition as an interim, transitional measure in the event that the Commission declines to adopt its preferred alternative, namely, comprehensive intercarrier compensation reform as contemplated in the

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8 *See* note 3, *supra*. *See also* Public Notice, "Comment Sought On Missoula Intercarrier Compensation Reform Plan," CC Docket No. 01-92, DA 06-1510 (Jul. 25, 2006).

Missoula Plan.[9] AT&T suggests that "in the event the Commission fails to act on comprehensive reform, it will have no choice but to resolve the myriad disputes discussed above on a piecemeal basis."[10] AT&T claims that there is a desperate need for the Commission "to resolve, once and for all, a series of never-ending, multi-billion dollar disputes in the industry over the proper intercarrier compensation rate owed for traffic termination" in order to eliminate "the arbitrage opportunities created by the existing intercarrier compensation regime."[11] Yet although AT&T describes its Petition as "an interim, transitional" measure, in reality it would not operate to eliminate "arbitrage opportunities" but would instead merely substitute new "arbitrage opportunities" for old ones.

AT&T's petition would not provide a transition to comprehensive intercarrier compensation reform because it does nothing to move the industry toward a cost-based and economically efficient solution. Rather than taking an interim step away from the current system and towards a comprehensive solution, AT&T's merely preserves – and actually expands the scope of – the current uneconomic, above-cost access charge system. "Piecemeal" may indeed be an apt description for what AT&T is seeking and, like most "piecemeal" solutions, it will create more problems than it can solve.

AT&T claims that its petition addresses the urgent problem of VoIP providers who escape payment of access charges by relying on the ESP

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9 Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 01-92, *et al.* (filed July 17, 2008) ("*July 17 ex parte*").

10 *Id.* at 1.

11 *Id.*

Exemption.[12] But the petition also includes a proposal that is not directed at VoIP traffic, namely, to reduce certain intrastate switched access charges to bring them into parity with interstate charges and then recover the revenue shortfall by increasing interstate originating switched access charges by perhaps $0.007 or more[13] as well as increasing end user subscriber line charges ("SLCs"). AT&T's ILECs would thus maintain their existing revenue streams, including those that are inflated by economically inefficient flaws in the existing intercarrier compensation regime, while the costs confronting end users and AT&T's IXC rivals that utilize IP technology would increase. In this "piecemeal" approach, AT&T is asking the Commission to eliminate disparities that work against AT&T's interests, while leaving unaddressed and in place other longstanding disparities that benefit AT&T disproportionately and lead to the very "regulatory arbitrage" AT&T claims to be correcting.

AT&T's plan that ILECs be permitted (as a regulatory matter) to increase end user SLCs and originating switched access charges is particularly noteworthy in light of AT&T's persistent contention that it is confronting rampant and growing competition in the local exchange marketplace. The ILECs' principal rivals in the local exchange service market – facilities-based cable

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12 AT&T Petition at pp. 26-42.

13 AT&T states that "[t]he petition further asks the Commission to enable AT&T and similarly situated carriers to offset the reductions they make in intrastate terminating rates to achieve parity with interstate rate levels by waiving certain price cap rules to allow … increases in interstate originating switched access charges subject to a cap of $0.0095 per average traffic sensitive minute." *July 17 ex parte,* note 9, *supra,* at 2. This carefully-worded description makes clear that AT&T is seeking to increase the "average traffic sensitive" ("ATS") rate – not the originating switched access rate – to $0.0095. Holding the *terminating* rate constant at its present level, the *originating* rate could then increase before the ATS – *i.e.,* the weighted average of originating and terminating minute charges – would reach the proposed $0.0095 level.

MSOs (*e.g.,* Comcast, Cox, Time Warner, Cablevision) and the small number of other facilities-based CLECs – are not subject to FCC price cap rules and can set their end user charges (including any rate element they may characterize as a “SLC”) however they choose. In asking the FCC to authorize its ILEC entities to raise SLCs and originating switched access charges, AT&T obviously believes that it will be able to implement those increases as an economic matter without losing so much of its business to nonregulated competitors as to make the increases unprofitable. Indeed, AT&T’s proposal demonstrates that it is unconcerned about the putative “competition” that it claims to confront, because it anticipates either that its rivals will simply raise their own prices to match AT&T’s rate increases, and/or that AT&T’s customers are sufficiently locked-in to AT&T – either through a lack of competitive alternatives, as in the case of most enterprise customers, or simply as a result of consumer inertia created through “bundling” and other marketing tactics – that defections will be small enough to ignore.

AT&T’s petition focuses exclusively on changes to the existing intercarrier compensation system the would be advantageous to AT&T and ignores changes that would serve the broader public interest. For example, AT&T claims to be addressing calls using VoIP technology that escape the same switched access charge treatment as conventional circuit-switched calls. But AT&T makes no mention of the exemption from switched access charges that AT&T enjoys for calls originated from its wireless phones and completed to wireline phones located within the same Major Trading Area ("MTA)" as the caller.[14] This exemption from access charges permits wireless carriers to escape paying such charges on most intrastate calls originated by their customers, and on a significant percentage of interstate calls as well. Yet the volume of VoIP calls for which AT&T claims there is a "desperate need" for interim relief pales in comparison to the volume of intra-MTA wireless calls that similarly escape access charge treatment and about which there is no mention in AT&T's petition.[15]

III. THE COMMISSION MUST ADOPT SOLUTIONS THAT SERVE THE PUBLIC INTEREST AND STATUTORY OBJECTIVES, NOT THE PAROCHIAL INTERESTS OF INDIVIDUAL STAKEHOLDERS

AdHoc has long supported initiatives aimed at reducing switched access charges to cost-based levels and supports in principle the goal of technological,

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[14] The FCC defined the "local calling area" for wireless phones as the entire MTA. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Interconnection Between Local Exchange Carriers and Commercial Radio Service Providers*, CC Docket 95-185; *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*"), 16014, at para. 1036. ("Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.,* MTA) serves as the most appropriate definition of a local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.") But MTAs are expansive areas typically covering most or all of a state and, in some cases, several states. Wireless calls completed within the same MTA are considered "local" for intercarrier compensation purposes. The CMRS carrier pays local reciprocal compensation rates rather than switched access charges to terminate the call at a wireline ILEC.

[15] The relative scale of the intra-MTA wireless and VoIP markets suggests that intra-MTA traffic volumes are as much as 100 times greater than the VoIP traffic under discussion. Industry estimates indicate that more than 262.5-million wireless phones are in use in the US, "Estimated Current US Wireless Subscribers," Cellular Telecommunications and Internet Association ("CTIA") home page, http://www.ctia.org (accessed 7/30/08), while there are 3-4 million customers estimated for nomadic or "over-the-top" VoIP providers nationwide. Vonage, 8x8 2007 10-K Annual Reports. Using another available metric, US wireless industry annual revenues of about $140b are roughly 100 times greater than the the $1.4b reported by the major VoIP service providers *Cf.* http://www.ctia.org/ (accessed 7/30/08) and Vonage, 8x8 2007 10-K Annual Reports. The volumes of wireless intra-MTA calling are expected to continue their growth.

geographic, and competitive neutrality. Pecuniary distortions introduced by arbitrary distinctions based upon the type of call, the technology involved, the jurisdiction, or the carrier(s) providing the service encourage inefficient investments and uneconomic choices and unnecessarily increase the overall cost and reduce the overall efficiency of telecommunications in general. The specific proposals being advanced by AT&T in its *Waiver Petition* and by the AT&T/Verizon coalition in its August 6 *ex parte* letter do not address these concerns and, in fact, offer limited, highly parochial solutions that benefit AT&T both economically and competitively while shifting costs to other stakeholders – all without converging upon a unified solution or furthering any overarching public policy goal. No valid purpose would be served – and the goal of a consistent, fair, and competitively neutral intercarrier compensation regime would be disserved – were the Commission to grant either of the two AT&T proposals or resolve intercarrier compensation issues by adopting the *Missoula Plan* as part of an expedited response to the *Core Communications Mandate*.

As AdHoc has said repeatedlyin the *Unified Intercarrier Compensation Rulemaking* that has been open and unresolved since 2001, [16] the current intercarrier compensation system needs to be fixed and to be fixed comprehensively, rather than on a piecemeal basis.[17] AdHoc has consistently

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[16] AdHoc filed Reply Comments in Docket 01-92 on November 5, 2001. AdHoc subsequently filed additional Comments on May 23, 2005 and Reply Comments on July 20, 2005 in response to the Commission's Further Notice of Proposed Rulemaking in that docket. AdHoc subsequently filed comments on October 25, 2006 in response to the Commission's public notice inviting comment on the Missoula Plan. *See* note 8, *supra*.

[17] In its Reply Comments on the Commission's initial NPRM, AdHoc noted that partial implementation of intercarrier compensation reform that ignores access charge issues will:

•exacerbate any uneconomic arbitrage among services whose costs are identical;

cautioned the Commission against solutions that (1) fail to resolve the long-standing problem of above-cost rates for switched access charges,[18] and (2) accommodate unsupported claims that access charge reductions as part of comprehensive intercarrier compensation reform require offsetting increases to other charges so that ILECs can be "made whole."[19] If the Commission entertains any interim "fixes" to the intercarrier compensation system, it must first address these higher priority issues before it expands the current flawed system to additional services.

A. The Commission Cannot Base Intercarrier Compensation Mechanisms on Competitive Hopes and Predictions

AdHoc agrees that a regulatory solution to intercarrier compensation issues is required because current competitive and marketplace forces are not capable of producing an economically efficient and competitively neutral outcome. Indeed, there has been a significant escalation both in vertical integration and in market concentration over the years since the first intercarrier

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•saddle carriers and consumers with unrecoverable compliance costs;
•ignore the far more damaging and long-standing distortions in access pricing; and
•be unsustainable in the face of changes in technology and competitive market structures.

18 AdHoc Reply Comments, July 20, 2005 at 1("Despite the disagreement among the parties on important issues, excessive, non-cost-based access charges cannot continue.") and 4 ("Throughout its long history of participation in FCC ratemaking, and more specifically access charge proceedings, Ad Hoc has always endorsed the principle of cost-based pricing. Cost-based pricing of telecommunications service, when combined with a well-conceived and properly implemented universal service program best serves the goals of economic efficiency and equity. Fortunately, at the present, there seems to be no dispute that the costs associated with the provision of originating and terminating interconnection are the same, regardless of the jurisdictional nature of the traffic. The problem at hand is how to get all of the rates to the same level.").

19 *See*, *e.g.,* AdHoc Comments filed October 25, 2006 at iii ("Despite the need for a single, rational intercarrier compensation scheme, the Commission should reject the Missoula Plan because the Plan largely is premised on maintaining carrier revenues. None of the Missoula Plan proponents have justified revenue neutrality.") and 11 ("The Commission may not rely on existing revenue levels as a measure of reasonable cost recovery.").

compensation reform initiative. The various RBOC mergers, the reintegration of ILECs and IXCs through the SBC/AT&T and Verizon/MCI mergers, the demise of the “stand alone long distance” market, the reduction in the number of national CMRS competitors from six to four, the growth of RBOC control of the CMRS market overall, and the expansion of ILEC and RBOC involvement in the ISP and broadband markets all serve to increase the volume of intracompany end-to-end traffic while at the same time placing non-integrated competitors at an even greater competitive disadvantage than at any time since the break-up of the Bell System in 1984.

Accordingly, the Commission can not rely upon the hope of competitive entry to regulate and normalize charges for the origination and termination of traffic. The twelve years since the 1996 market-opening amendments to the Communications Act have demonstrated, over and over again, that the Commission’s reliance on predictions of imminent competitive entry as a basis for deregulation has been misplaced, and has resulted in deregulating what are still *de facto* monopolies.

With respect to special access, even a cursory review of the record in the *Special Access Rulemaking*[20] refutes any suggestion that these markets are sufficiently competitive to discipline carrier compensation practices. The record in that proceeding regarding AT&T’s persistent and excessive special access rates of return defeats any claim that the special access market is effectively

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[20] *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

competitive.[21] Service providers in competitive markets could not sustain returns of 44% to 101% as the regional BOCs have done over the past five years under the Commission's pricing flexibility rules for special access.[22]

But the special access market is not the only access market that lacks effective competition. As the Commission itself has recognized, terminating switched access also is not provided in a competitive market. When a long distance call is terminated (or a toll free call is initiated), the long distance carrier does not select the access provider who sets the terminating rate. That selection is governed by the terminating end user's choice of local exchange carrier (or the originating end user, in the case of toll free service). And it is precisely because the long distance carrier does not select the terminating access provider that it has no ability to "vote with its feet" – *i.e.,* to use market alternatives where terminating access charges are excessive. In short, there is market failure in the case of switched access services. Recognizing this market failure, the Commission concluded long ago that it cannot take a hands-off approach with respect to terminating access.[23]

Nor can the Commission logically conclude that effective competition exists with respect to originating access service. The Commission initially exercised no regulation of access service rates imposed by competitive local exchange carriers ("CLECs"), believing that the rates charged by the ILECs

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[21] Comments and Reply Comments of AdHoc Telecommunications Users Committee (June 13, 2005 and July 29, 2005), *filed in Special Access Rulemaking, id.*

[22] ARMIS 4301 Reports for years ending 2003 through 2007.

[23] See *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16135-36 (19997), *aff'd sub. nom. Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir.1998).

would constrain CLEC pricing.[24] In the *Seventh* and *Eighth Reports and Orders* in the *Access Charge Reform* proceeding,[25] the Commission addressed disputes between long distance carriers and CLECs over the CLECs' access rates. The Commission essentially concluded that the competition which may exist for consumer access lines does not equate to competition for access service.[26]

In addition, the data filed in the Commission's ARMIS system demonstrate that RBOC earnings on interstate regulated services have steadily increased, and that this trend shows no signs of abating. As summarized in Figure 3 below, for the year ended December 31, 2007, regional BOC rates of return on the interstate regulated services averaged 33% (almost three times the FCC's last authorized return level of 11.25%).[27] Firms in competitive industries are normally only able to maintain such excessive earnings for a short period of time because the existence of such high profit levels would ordinarily induce others to enter the

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24 Of course, the Commission has always regulated the interstate access service rates charged by dominant providers of exchange access service.

25 *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001); *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order, 19 FCC Rcd 9108 (2004).

26 In the *Seventh Report and Order*, *supra*, the Commission explained that "although the end user chooses her access provider, she does not pay that provider's access charges. Rather, the access charges are paid by the caller's IXC [long distance service provider], which has little practical means of affecting the caller's choice of access provider (and even less opportunity to affect the called party's choice of provider) and thus cannot easily avoid the expensive ones. … [T]he Commission has [also] interpreted section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all their end users. Consequently, IXCs have little or no ability to create incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize cost." *Id.*, Seventh Report and Order, 16 FCC Rcd at 9935 (para. 31).

27 The data in the ARMIS 43.01 reports reveals rates of return of 35% for AT&T, 25% for Verizon, and 53% for Qwest. It should be noted that these return numbers are adjusted for interest, taxes, and amortization.

market. Over time, extraordinary profit levels should be eliminated as prices are forced by competitive market dynamics to make their inevitable march towards costs. This has not happened in the case of the regional BOCs. As Figure 4 below demonstrates, not only have extraordinary BOC profit levels not diminished over the last five years, the magnitude of the profits has continued to grow. The fact that BOC earnings at excessive, supracompetitive levels have persisted and even increased over this extended period of time compels the conclusion that price-constraining entry is not sufficient to discipline BOC pricing.

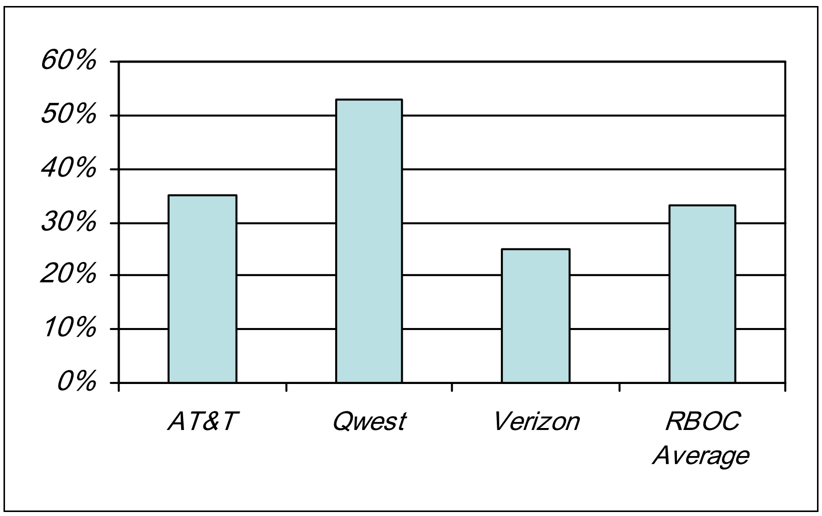

Figure 3: RBOC Interstate Rate of Return - 2007

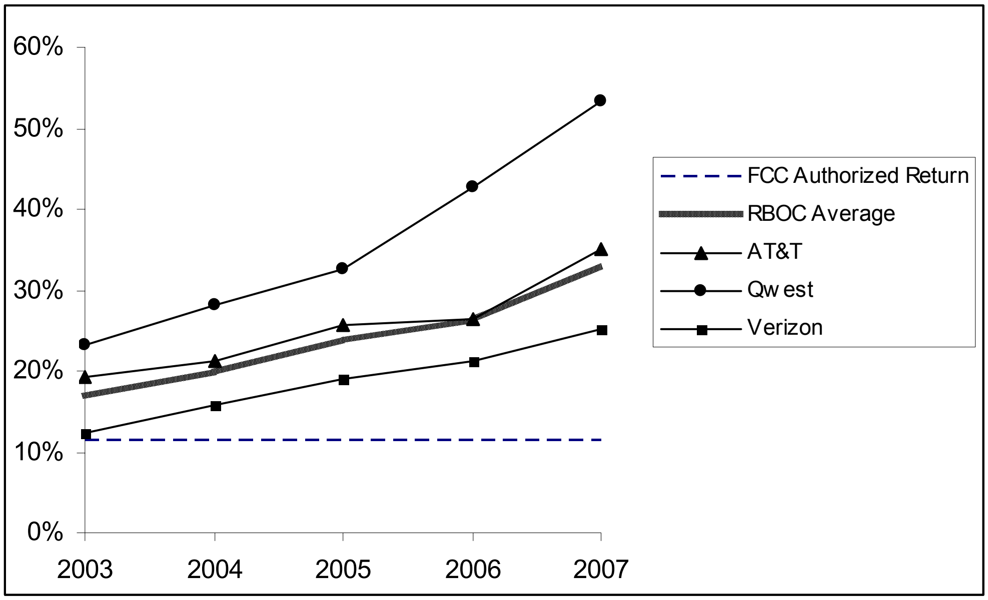

Figure 4: RBOC Interstate Rates of Return 2003 - 2007

B. The Commission Must Reject Carrier Demands for Revenue Neutrality

A core premise of each of the AT&T proposals – *Missoula*, the AT&T *Waiver Petition*, and the *August 6 Ex Parte Proposal* – is "revenue neutrality" for the incumbent local exchange carriers, meaning that any reform of the current regime cannot correct the excessive revenue streams embedded in that system. While *Missoula* spells this out in considerable detail, the others are more sketchy in their description – indeed, the *August 6 Ex Parte Proposal* sums up its approach to revenue neutrality in a single twelve word sentence:

> Finally, this transition should allow for appropriate alternative recovery mechanisms, if needed.

AT&T's "interim proposal in its declaratory ruling petition is, of course, more detailed – it would raise SLCs to subsidize lower intrastate access charges. By reducing carrier access charges and raising end user charges and/or universal service fund surcharges by an equivalent amount, AT&T's proposal would preserve the excessive levels of the current access charge revenue stream. The ILECs' long distance, wireless, broadband, and other nonregulated affiliates would enjoy the benefits of lower call termination charges and other intercarrier payments, but any pass-through of cost reductions to consumers in the form of lower prices would be offset for consumers by increases in SLCs and USF charges.

Indeed, the ILEC entities themselves have been enjoying unprecedented earnings growth due in large part to the excessive (relative to cost) level of access charges and other intercarrier fees they have been permitted to impose and sustain without fear of losses to (their nonexistent) competitors. The traditional public policy rationale for permitting the ILECs to impose above-cost access charges – to subsidize their rates for basic residential exchange service – is no longer applicable, since most residential rates have been deregulated at the state level. There is no indication that in the aggregate, *i.e.*, including all services sold to residential consumers, any portion of the access charge surplus is actually being used to for any such "subsidy." Elimination of the excess profits being generated through above-cost access charges would still leave ILEC earnings well above the 11.25% level last authorized by the Commission back in 1990.[28]

For much of the past decade, ILECs have been demanding – and have been receiving – increased pricing and earnings flexibility, regulatory forbearance, and outright deregulation, at both the federal and state levels.

[28] *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, FCC No. 90-315, 5 FCC Rcd 7507 (1990).

AdHoc has opposed these initiatives where competition has failed to develop sufficiently to discipline the incumbent carriers' prices. In seeking to be "made whole" with respect to intercarrier compensation, the ILECs are asking to have it both ways: they claim to be facing competitive risks which justify regulatory flexibility and increased earnings but simultaneously seek regulatory insulation from any risk of market-driven reductions in their persistent pricing and earnings excesses.

CONCLUSION

For the reasons stated above, AT&T's petition should be denied. The Commission should devote its limited resources to comprehensive reform of intercarrier compensation mechanisms and reject self-serving piecemeal solutions.

Respectfully submitted,

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August 21, 2008

Certificate of Service

I, Dorothy Nederman, hereby certify that true and correct copies of the preceding Reply Comments of AdHoc Telecommunications Users Committee were filed this 21st day of August, 2008 via the FCC's ECFS system and by email to:

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ATTACHMENT A

Comments of AdHoc Telecommunications Users Committee
CC Docket No. 01-92
Filed October 25, 2006